

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 PETER BURCHETT,
12
13 Plaintiff,

14 v.

15 CALIFORNIA DEPT. OF
16 CORRECTIONS AND
17 REHABILITATION, *et al.*,
18 Defendants.

CASE NO. 2:18-cv-08933 DSF (AFM)

**ORDER DISMISSING
COMPLAINT WITH LEAVE TO
AMEND**

19 In accordance with the mandate of the Prison Litigation Reform Act of 1995,
20 the Court has screened the Complaint in this case to determine whether the action is
21 frivolous or malicious; or fails to state a claim on which relief may be granted; or
22 seeks monetary relief against a defendant who is immune from such relief. *See* 28
23 U.S.C. § 1915(e)(2); *Lopez v. Smith*, 203 F.3d 1122, 1127 n.7 (9th Cir. 2000)
24 (“section 1915(e) applies to all *in forma pauperis* complaints” and district courts
25 should “dismiss a complaint that fails to state a claim upon which relief may be
26 granted”) (en banc). Such screening is required before a litigant proceeding *in forma*
27 *pauperis* may proceed to serve a pleading. *Glick v. Edwards*, 803 F.3d 505, 507 (9th
28 Cir. 2015) (noting that “a preliminary screening” of a complaint filed by a litigant

1 seeking to proceed *in forma pauperis* is “required by 28 U.S.C. § 1915(e)(2)”;
2 *O’Neal v. Price*, 531 F.3d 1146, 1152-53 (9th Cir. 2008) (citing *Lopez* and discussing
3 a district court’s “mandatory duty” to dismiss an *in forma pauperis* complaint under
4 the criteria of 28 U.S.C. § 1915(e)(2)(B)).

5 After careful review, the Court finds that the Complaint lacks an arguable basis
6 in either fact or law, is in large part unintelligible or incomprehensible, and fails to
7 state a federal claim on which relief may be granted against any defendant. *See*
8 *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992). Plaintiff’s assertions, which do not
9 include clear or understandable factual support, fall far short of raising a purported
10 right to relief beyond the speculative level. *See Bell Atlantic Corp. v. Twombly*, 550
11 U.S. 544, 555 (2007). In addition, plaintiff’s Complaint fails to comply with Rule 8
12 of the Federal Rules of Civil Procedure. Although the Court construes a *pro se*
13 plaintiff’s pleadings liberally, plaintiff nonetheless must allege a minimum factual
14 and legal basis for each claim that is sufficient to give a defendant fair notice of what
15 plaintiff’s claims are and the grounds upon which they rest. *See, e.g., Brazil v. United*
16 *States Dep’t of the Navy*, 66 F.3d 193, 199 (9th Cir. 1995); *McKeever v. Block*, 932
17 F.2d 795, 798 (9th Cir. 1991) (a complaint must give defendants fair notice of the
18 claims against them). Further, the “tenet that a court must accept as true all of the
19 allegations contained in a complaint is inapplicable to legal conclusions.” *Ashcroft*
20 *v. Iqbal*, 556 U.S. 662, 678 (2009). Nor is the Court “bound to accept as true a legal
21 conclusion couched as a factual allegation.” *Wood v. Moss*, 134 S. Ct. 2056, 2065
22 n.5 (2014) (citing *Iqbal*, 556 U.S. at 678). Federal Rule of Civil Procedure 8(a)
23 requires that a complaint contain “a short and plain statement of the claim showing
24 that the pleader is entitled to relief” and “a demand for the relief sought.” Rule
25 8(d)(1) instructs that “[e]ach allegation must be simple, concise, and direct.” Failure
26 to comply with Rule 8 constitutes an independent basis for dismissal of a pleading
27 that applies even if the claims are not found to be wholly without merit. *See, e.g.,*
28 *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996).

1 Further, to state a federal civil rights claim, plaintiff must allege that a specific
2 defendant, while acting under color of state law, deprived him of a right guaranteed
3 under the Constitution or a federal statute. *See West v. Atkins*, 487 U.S. 42, 48 (1988).
4 “A person deprives another ‘of a constitutional right, within the meaning of section
5 1983, if he does an affirmative act, participates in another’s affirmative acts, or omits
6 to perform an act which he is legally required to do that *causes* the deprivation of
7 which [the plaintiff complains].’” *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988)
8 (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (emphasis and alteration
9 in original)). A claim has “substantive plausibility” if a plaintiff alleges “simply,
10 concisely, and directly [the] events” that entitle him to damages. *Johnson v. City of*
11 *Shelby*, 135 S. Ct. 346, 347 (2014).

12 Here, to the extent that the Court can discern the claims that plaintiff is
13 purporting to raise in his complaint, it appears (perhaps among other undefined
14 claims) that plaintiff is contending that prison guards violated plaintiff’s rights under
15 the Eighth Amendment when they allegedly beat and kicked him, as well as possibly
16 pepper sprayed him, when he lay handcuffed. The Complaint, however, fails to set
17 forth specific factual allegations that link actions or events to a particular named
18 defendant. The Complaint also includes other allegations, but they are so unclear,
19 disjointed and unintelligible that the Court cannot determine what claims plaintiff is
20 attempting to raise against what named defendant. Accordingly, the Court finds that
21 plaintiff’s factual allegations fail to plausibly allege that the named defendants took
22 any action, participated in the action of another, or failed to perform an action that
23 caused a deprivation of a right guaranteed under the Constitution or a federal statute.
24 In short, the Complaint fails to provide a simple, concise and direct statement that
25 would allow any defendant to have fair notice of the claims against him or her and
26 the ability to adequately respond. *See Twombly*, 550 U.S. at 555.

27 ///

28 ///

1 However, because it is not absolutely clear that the deficiencies of the
2 Complaint cannot be cured by amendment, plaintiff is provided with an opportunity
3 to file a First Amended Complaint. *See, e.g., Rosati v. Igbinoso*, 791 F.3d 1037, 1039
4 (9th Cir. 2015) (“A district court should not dismiss a *pro se* complaint without leave
5 to amend unless it is absolutely clear that the deficiencies of the complaint could not
6 be cured by amendment.”) (internal quotation marks omitted); *Lopez*, 203 F.3d at
7 1130 (a district court may deny leave to amend if it determines that the pleading could
8 not possibly be cured by the allegation of other facts”). If plaintiff wishes to proceed
9 with this action, he should set forth, “simply, concisely, and directly” the factual
10 allegations giving rise each claim he wishes to raise. *See Johnson*, 135 S. Ct. at 347.

11 **If plaintiff still desires to pursue this action, he is ORDERED to file a First**
12 **Amended Complaint no later than January 19, 2019, remedying the pleading**
13 **deficiencies discussed above.** The First Amended Complaint should bear the docket
14 number assigned in this case; be labeled “First Amended Complaint”; and be
15 complete in and of itself without reference to the original complaint, any amended
16 complaint, or any attachment or document.

17 The clerk is directed to send plaintiff a blank Central District civil rights
18 complaint form, which plaintiff is encouraged to utilize. Plaintiff is admonished that
19 he must sign and date the civil rights complaint form, and he must use the space
20 provided in the form to set forth all of the claims that he wishes to assert in a First
21 Amended Complaint.

22 **Plaintiff is further admonished that if plaintiff fails to timely file a First**
23 **Amended Complaint, or he fails to remedy the deficiencies of this pleading as**
24 **discussed herein, the Court will recommend that the action be dismissed on the**
25 **grounds set forth above and for failure to diligently prosecute.**

26 In addition, if plaintiff no longer wishes to pursue this action, he may request
27 a voluntary dismissal of the action pursuant to Federal Rule of Civil Procedure 41(a).
28

1 The clerk also is directed to attach a Notice of Dismissal form for plaintiff's
2 convenience.

3 **IT IS SO ORDERED.**

4
5 DATED: 12/12/2018

6 

7 ALEXANDER F. MacKINNON
8 UNITED STATES MAGISTRATE JUDGE

9
10 Attachments: Civil Rights Complaint (CV-066)
11 Notice of Dismissal (CV-09)
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28